

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 94-184**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **2. Form, Style and Placement in Administrative Code**

Section NR 411.04 (1) could be moved to s. NR 411.03 since it relates to the permit requirements instead of the permit exemptions.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

Section NR 411.04 (1) cites s. 144.393 (4) (a), Stats. Section 144.393 (4) (a), Stats., states that the department may waive certain requirements to permit approval if the requirement is not applicable to the source. Is this cite incorrect, or does the subsection mean that indirect sources are exempt from s. 144.393 (2) (a) and (b) and (3) (a)? This subsection needs to be clarified.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 400.02 (47), it appears that the phrase “on which mobile source activity is conducted” includes sources that would be categorized under the phrase “which conveys motor vehicles” in the subsection. If so, “which conveys motor vehicles or” could be deleted.

b. In s. NR 400.02 (54), it appears that “motor vehicles” would be included in the category of “motorized vehicles.” If so, one of the phrases could be deleted, especially since the subsection gives examples of the types of vehicles included. In the second sentence, “Such” and “, but are not limited to” should be deleted.

c. The title of ch. NR 408 should be amended to indicate that it regards only direct major sources. The title would also be more consistent with the title of ch. NR 411 if it were “CONSTRUCTION PERMITS FOR DIRECT MAJOR SOURCES IN NONATTAINMENT AREAS.”

d. In s. NR 411.02 (2), the phrase “to engage in” should be deleted because the word “construction” is a noun, not a verb.

In the same subsection, the phrase “at any location on the property” is vague. It could be deleted since, earlier in the sentence, “on-site” is used. Alternatively, a phrase, such as “which includes the indirect source,” could be added at the end of the sentence and “on-site” could be deleted.

e. In s. NR 411.02 (3), the second sentence would be clearer if it were, for example, “If an environmental impact document is required, ‘highway project’ means the portion of the highway to which that document applies.”

f. Section NR 411.02 (7) is somewhat confusing. It would be clearer as “...means an intersection that will have at least part of its new roadway surface in the new intersection boundary and that is on land that is currently used for roadway within the boundary of an existing intersection.”

g. In s. NR 411.02 (11), the phrase “where traffic flow is restricted” is vague. Does this mean a queue is always at an intersection or that it also includes cars in a traffic jam?

h. In s. 411.02 (14), the definition might be clearer if the phrase “on each side of this boundary” were replaced with “in each county.”

i. In s. NR 411.03 (title), the phrase “AND EXEMPTIONS” could be deleted since the section is really about requirements, and exemptions are discussed fully in s. NR 411.04.

j. In s. NR 411.04 (2), the phrase “unless the construction, relocation or modification of the source is prohibited by any permit, plan approval or special order applicable to the source” suggests that if the source is prohibited, it must obtain a construction permit. However, if the source is prohibited, would it be prohibited with or without a construction permit? If so, this section should be clarified to state that if a source is prohibited, it should not even apply for a permit.

k. In s. NR 411.04 (2) (a), because road and highway projects are discussed in par. (b), the phrase “If the indirect source will not be a road or highway project,” could be deleted. It might be clearer if par. (a) was “No permit is required if an indirect source with associated parking will be any of the following:”.

l. In s. NR 411.04 (2) (b), the phrase “If it is” is vague. It could be replaced with “For road and highway projects....”

m. In s. NR 411.04 (2) (b), subds. 1 to 5 might be clearer if each began with the type of road or highway segment it is discussing. For example, subd. 1 could be changed to “For any

new road or highway segment or new intersection leg located in a metropolitan county, a peak hour volume of less than 1,200 motor vehicles per hour.”

n. In s. NR 411.04 (2) (c), the phrase “worst case” would be clearer as “maximum potential.”

o. Section NR 411.05 is somewhat confusing. The wording could be more consistent to clarify the section. For example, the section could be changed to:

Exemption or the granting of an exemption under this chapter from the requirement to obtain an indirect source permit does not exempt any person from the emission limitation requirements of chs. NR 400 to 499, the ambient air quality requirements of ch. NR 404, the reporting requirements of ch. NR 438, the requirement to obtain a construction permit under ch. NR 406 or an operation permit under ch. NR 407 for any direct stationary source associated with the indirect source or the requirements of any other provision of law.

It might also be clearer to place each requirement in a separate subsection. Further, it would be easier to amend the section in the future if the requirements were in subsections and a subsection could be added or deleted without amending the whole section.

p. In s. NR 411.06 (2) (b), the word “will” should be changed to “shall.”

Also, it is not clear what is meant by the sentence “These traffic counts will include both the construction year and the construction year plus 10 year estimations.” Does it mean that 10 estimates must be submitted or two estimates that measure different time periods must be submitted? This should be clarified.

q. In s. NR 411.06 (2) (c), “A computer” should replace “Computer.”

r. In s. NR 411.07, the phrase “acting on” would be clearer as “reviewing and approving.”

s. In s. NR 411.10 (1), pars. (a) to (g) could each end with a period instead of a semicolon to facilitate amending the subsection in the future. If this change is made, “or” should be deleted from par. (g). [See s. 1.03 (intro.), Manual.]

t. In s. NR 411.10 (2), the phrase “and timetable” should be added after the word “procedures” to be consistent with the title of the subsection.

Also in that subsection, the phrase “in permit processing actions covered” is wordy and could be replaced with “to process permits.”

u. In s. NR 411.11 (1), the phrase “for up to 18 additional months on written request upon satisfactory showing that an extension is justified” is confusing. It could be changed to “for up to 18 additional months upon written request showing that an extension is justified.”